Supreme Court, U.S.
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No. 00-1596

IN THE

Supreme Court of the United States

BOARD OF EDUCATION OF THE
SAN JUAN SCHOOL DISTRICT,

Petitioner,

v.

JIMMY SINAJINI, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF

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QUESTION PRESENTED

Whether a settlement agreement and consent decree automatically make the plaintiffs prevailing parties under 42 U.S.C. § 1988 merely because the agreement and decree modify the defendant's behavior in ways that benefit the plaintiffs, irrespective of whether the plaintiffs obtained actual relief on the merits of their claims.

Although a reply is typically unnecessary at the certiorari petition stage, it is necessary in this case to clarify two points on which respondents have created significant confusion.

I.

THE ISSUE IS NOT THE CATALYST TEST BUT RATHER THE BROADER QUESTION OF WHETHER AN AWARD OF ATTORNEYS FEES REQUIRES THAT PLAINTIFFS OBTAIN ACTUAL RELIEF ON A MERITORIOUS CLAIM.

Respondents recast the question presented as whether the catalyst test controls this case (Resp. *i*), and then argue that it does not because "the catalyst test does not apply" to cases involving consent decrees and settlement agreements. Resp. 4-5. However, the issue presented sweeps much more broadly than respondents' cramped reformulation.

At the outset, respondents are plainly wrong in their sweeping assertion that catalyst-test principles do not apply to cases involving a consent decree or settlement agreement. The catalyst test has indeed been applied in consent decree cases. One of the first catalyst-test cases — indeed, the very case from which the Tenth Circuit drew its own catalyst test — was a consent decree case. *See Nadeau v. Helgemoe*, 581 F.2d 275 (1st Cir. 1978); *see also J&J Anderson, Inc. v. Town of Erie*, 767 F.2d 1469, 1472-73 (10th Cir. 1985) (adopting *Nadeau* catalyst test).

The catalyst test in its various forms is simply a reflection of the broader rule, repeatedly affirmed in numerous decisions of this Court, that attorneys fees under 42 U.S.C. § 1988 may be awarded only when a plaintiff has advanced

a meritorious civil rights claim. *See Hewett v. Helms*, 482 U.S. 755, 760 (1987) ("Respect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail" under section 1988); *Hanrahan v. Hampton*, 446 U.S. 754, 758 n.4 (1980) (per curiam) (attorney's fees provisions "permit the award of counsel fees only to a party who has prevailed on the merits of a claim"); *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 418 (1978) ("when a district court awards counsel fees to a prevailing plaintiff, it is awarding them against a violator of federal law"). That is the essence of the holding in *Farrar v. Hobby*, 506 U.S. 103 (1992), where the Court ruled that "to qualify as a prevailing party, a civil rights plaintiff must obtain at least some *relief on the merits of his claim*." *Id.* at 111 (emphasis added). As the Chief Justice has underscored, a plaintiff is entitled to an award of attorney's fees only if his suit had legal merit:

> It is clear beyond per-adventure that unless an action brought by a private litigant contains some basis in law for the benefits ultimately received by that litigant, the litigant cannot be said to have "enforced" the civil rights laws or to have promoted their policies for the benefit of the public at large.

Long v. Bonnes, 455 U.S. 961, 966-67 (1982) (Rehnquist, J., dissenting from denial of certiorari).

It is of course true, as respondents (Resp. 4-5) and the court below (Pet. App. 7a-8a) have noted, that in their various formulations of the catalyst test the courts of appeals have included a requirement that before attorney's fees may be awarded the plaintiff must demonstrate that his claims had

at least some merit.[1] But that is only because such a requirement must always be met — in any context — for a plaintiff to qualify for attorney's fees. Otherwise nuisance settlements would render the plaintiff a prevailing party entitled to attorney's fees even where the plaintiff's claims were clearly frivolous — an outcome never intended by Congress nor contemplated by past decisions of this Court.

The court below dispensed with this essential requirement and instead held that if there is a settlement agreement or consent decree modifying the defendant's behavior so as to benefit the plaintiff in any way, then the plaintiff has automatically prevailed — whether or not such relief was sought by the plaintiff in the pleadings or was in any way required by law. Pet. App. 8a. Since almost by definition every settlement agreement or consent decree benefits the plaintiff in at least some way, the effect of the decision below is that attorney's fees have become automatic in cases involving settlement agreements or consent decrees. This creates a clear conflict with *Farrar* and the entire basis for attorney's fees under section 1988.

It also creates a conflict among the circuits. As noted in the petition, the Eighth Circuit in *Warner v. Independent School District No. 625*, 134 F.3d 1333 (8th Cir. 1998), rejected the very sort of "benefit to plaintiff equals entitlement to attorney's fees" reading of *Farrar* which the Tenth Circuit has adopted in the context of settlement agreements and consent decrees.

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1. *See, e.g., Zinn v. Shalala*, 35 F.3d 273, 274 (7th Cir. 1994) ("the plaintiffs' claims, if pressed, cannot have been frivolous, unreasonable, or groundless"); *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. 1*, 17 F.3d 260, 262 (8th Cir. 1994) (same); *Pembroke v. Wood County*, 981 F.2d 225, 230-31 (5th Cir.) (same), *cert denied*, 508 U.S. 973 (1993).

II.

RESOLUTION OF BUCKHANNON WILL ADDRESS THE BASIC ISSUE OF THIS CASE.

Respondents contend that the Court should not hold this case pending resolution of *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, No. 99-1848, because that case addresses an "entirely different question." Resp. 18. Respondents are seriously mistaken. As stated by the Solicitor General, the question presented in *Buckhannon* is:

> Whether a plaintiff may recover attorney's fees under federal statutes making attorney's fees available to a prevailing party when, as a result of the plaintiff's suit, the defendant voluntarily provides the plaintiff with requested relief.

Brief for the United States as Amicus Curiae Supporting Petitioners, 2000 WL 1740742 *I (2000).

The answer to that question will bear directly on whether attorney's fees are available in this case, where the District voluntarily, *i.e.*, without being required by law, provided respondents with relief (most of which they had not even requested) in order to put an end to frivolous but burdensome litigation. It is noteworthy that the Solicitor General has proposed the following rule in *Buckhannon*:

> The district court's determination [of whether petitioners qualify as "prevailing parties"] should be guided by three central considerations: (1) *whether petitioners' complaint had legal*

> *merit*; (2) whether petitioners received actual relief that redressed their grievances; and (3) whether petitioners' lawsuit played a substantial role in inducing respondents to change their ways.

Id. at *7 (emphasis added). Should this Court adopt such a rule for cases where there has been no final adjudication on the merits, then the standard employed by the district court in this case was correct and the decision below reversing the district court for applying the wrong standard was in error. The Court's resolution of *Buckhannon* is very likely to control the outcome of this case.

CONCLUSION

For the reasons stated here and in the petition for certiorari, petitioner respectfully requests that a writ of certiorari be granted. In the alternative, petitioner respectfully requests that the Court hold this case pending resolution of *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, No. 99-1848.

Respectfully submitted,

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